RECENT CASES

Actions—Pennsylvania Declaratory Judgments Act—Existence of Statutory Remedy as Ground for Denial of Declaratory Relief—In 1934, the City of Erie and the city collector of taxes joined[1] in filing a petition for a declaratory judgment under the Pennsylvania Declaratory Judgments Act,[2] to determine whether the collector had forfeited his right to certain commissions for the collection of delinquent taxes by failing to make final settlement of the tax duplicates. *Held,* that the petition should be dismissed, because there were other "statutory remedies established to meet the situation."[3] *City of Erie v. Phillips,* 187 Atl. 203 (Pa. 1936).

By the instant decision, which is the result of a decade of apparent misquotation of a statement made by former Chief Justice von Moschzisker in *Kariher's Petition,*[4] the Pennsylvania Supreme Court has again erred in giving to every statutory remedy the effect of depriving the courts of power to grant a declaratory judgment.[5] While the general rule is that declaratory relief may not be rendered if a special statutory remedy has been provided for a specific type of case, this rule should be interpreted in accordance with English practice, as declaratory relief is English in origin. And in the British Empire, the words "special statutory remedy" do not have an omnibus definition, but apply only to specific types of statutes,[6] as, for example, those regarding tax assessments, eminent domain, and divorce and annulment of marriage, where it was deemed more expedient to try the action according to the special statutory procedure, particularly when a special statutory court had been established.[7] In view of this background, the decision in the instant case seems to be erroneous, and although

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1. The court properly pointed out that the fact of joinder of the parties in asking for the declaratory judgment was not sufficient to confer jurisdiction upon the court when otherwise none existed. Instant case at 203. Accord: Stewart v. Herten, 125 Neb. 210, 249 N. W. 552 (1933).

2. PA. STAT. ANN. (Purdon, 1931) tit. 12, §§ 831-846.

3. The court said that if the collector retained the disputed commissions, then under a statute (the citation of which was not given) the city controller could surcharge the collector, and sue him in the name of the city for the sum retained. Instant case at 204.

4. 284 Pa. 455, 471, 131 Atl. 265, 271 (1925), in which the Chief Justice said that declaratory relief could not be given "where another statutory remedy has been specifically provided for the character of case in hand." Apprehensive lest the grant of a declaratory judgment in cases where another remedy was available would effect the abolition of all common law and equitable forms of relief [Cryan's Estate, 301 Pa. 386, 391, 152 Atl. 675, 677 (1930)], the court in later cases broadened this precise statement of the law. See Leafgreen v. La Bar, 293 Pa. 263, 264, 142 Atl. 224 (1928); Nesbitt v. Manufacturers' Casualty Ins. Co., 310 Pa. 374, 380, 165 Atl. 403, 405 (1933); Bell Telephone Co. v. Lewis, 313 Pa. 374, 376, 169 Atl. 571, 572 (1934). For a full discussion of the problem involved in the instant case, see Borchard, *Declaratory Judgments in Pennsylvania* (1934) 82 U. OF PA. L. REV. 317, 318 *et seq.*

5. Pennsylvania, however, is not alone on this point. Moore v. Louisville Hydro-Elec. Co., 226 Ky. 20, 10 S. W. (2d) 466 (1928); Lisbon Village Dist. v. Lisbon, 85 N. H. 173, 155 Atl. 252 (1931); Stewart v. Herten, 125 Neb. 210, 249 N. W. 552 (1933). *Contra:* Penn v. Glenn, 10 F. Supp. 483 (W. D. Ky. 1935); Wollenberg v. Tonningsen, 8 Cal. App. (2d) 722, 48 P. (2d) 738 (1935); Kalman v. Shubert, 270 N. Y. 375, 1 N. E. (2d) 470 (1936).

6. Barraclough v. Brown [1897] A. C. 615; Bull v. Attorney-General [1916] A. C. 564; North Eastern Marine Eng. Co. v. Leeds Forge Co. [1906] 1 Ch. 324; Flint v. Attorney-General [1918] 1 Ch. 216; Mutrie v. Alexander, 23 Ont. L. R. 396 (1911); New York & Ottawa Ry. v. Cornwall, 29 Ont. L. R. 522 (1913); Attorney-General v. Attorney-General, 20 Com. L. R. 148 (Australia, 1915).

7. See Borchard, *The Declaratory Judgment—A Needed Judicial Reform* (1918) 28 YALE L. J. 105, 114.

reached without recourse to the recent amendment [8] to Section 6 of the Pennsylvania Declaratory Judgments Act, the language of the amendment is so confused that the same decision probably would have been made even under the amended Act.[9] Therefore, because of the ineffectual nature of the amendment and because of the extreme improbability that the court will soon overrule itself, the Act should be carefully re-amended in order to secure for Pennsylvania a desirable form of relief enjoyed in many other jurisdictions.[10]

Admiralty—Liability of Vessel In Rem for Injury to Seaman—An inexperienced seaman was injured by an explosion in the oil-burning equipment of a steamship. He filed a libel against the vessel for damages, on the ground that the vessel was at fault because of the owner's failure to give him adequate instruction and warning with respect to the dangers of the work which he was required to perform. *Held,* libellant entitled to damages. *Marshall v. Manese,* 85 F. (2d) 944 (C. C. A. 4th, 1936).

As was pointed out by the court, the general rule in maritime law was that a seaman, while contractually entitled to "maintenance and cure" upon injury even by accident,[1] could recover compensatory damages only upon proof that his injury arose from the unseaworthiness of the vessel or from some defect in the appliances with which the vessel was furnished,[2] and that the vessel and owners were not liable for any other form of negligence. The court, however, apparently failed to recognize that the Jones Act [3] extended to seamen the rights that had earlier been given to railway employees,[4] thus permitting recovery of indemnity for any injury resulting from negligence. Although these rights can be exercised at the seaman's election in an action at law or in admiralty,[5] a suit *in rem* may not be brought under the Jones Act.[6] However, the instant case permits a suit having that effect, for the libellant, who was clearly entitled to recover under the Act,[7] brought a libel against the vessel, and the court by expansion of the recognized grounds of liability in such an action [8] allowed recovery, thus

8. PA. STAT. ANN. (Purdon, Supp. 1935) tit. 12, § 836. This amendment is discussed in Borchard, *Recent Developments in Declaratory Relief* (1936) 10 TEMPLE L. Q. 233, 234 *et seq.*

9. The language of the amendment is so self-contradictory that it is not strange that in the first case arising after its enactment, the Pennsylvania Supreme Court adhered to its earlier rule, although the obvious purpose of the amendment was to abolish it. Allegheny County v. Equitable Gas Co., 321 Pa. 127, 183 Atl. 916 (1936), 10 TEMPLE L. Q. 427.

10. See cases cited *supra* notes 5, 6.

1. See The Osceola, 189 U. S. 158, 175 (1903).

2. Cortes, Adm'r v. Baltimore Insular Line, 287 U. S. 367 (1932); see The Osceola, 189 U. S. 158, 175 (1903).

3. 41 STAT. 1007 (1920), 46 U. S. C. A. § 688 (1928).

4. FEDERAL EMPLOYERS LIABILITY ACT, 35 STAT. 65 (1908), 45 U. S. C. A. § 51 (1928). For the effect of the Jones Act see The Arizona v. Anelich, 298 U. S. 110 (1936); Nox v. United States Shipping Board Emergency Fleet Corp., 193 N. Y. Supp. 340 (Sup. Ct. 1922).

5. Panama R. R. v. Johnson, 264 U. S. 375 (1924); see Baltimore S. S. Co. v. Phillips, 274 U. S. 316, 324 (1927); Lindgren v. United States, 281 U. S. 38, 40 (1930); BENEDICT, ADMIRALTY (5th ed. 1925) § 22.

6. Plamals v. Pinar del Rio, 277 U. S. 151 (1928); The Black Gull, 82 F. (2d) 758 (C. C. A. 2d, 1936).

7. The Act applies ordinary rules of negligence, and it is well settled that a master must warn an inexperienced servant of special dangers connected with the employment. Mather v. Rillston, 156 U. S. 391 (1895); see Casey-Hedges v. Oliphant, 228 Fed. 636, 640 (C. C. A. 6th, 1916).

8. See *supra* note 2. Courts have held that employers owe to seamen the highest degree of care as to tools and appliances. The Edith Godden, 23 Fed. 43 (S. D. N. Y. 1885); Storgard v. France & Canada S. S. Corp., 263 Fed. 545 (C. C. A. 2d, 1920). As to the duty to instruct and warn, no cases directly in point have arisen with regard to seamen, but certain

creating a new form of remedial action when two clearly defined methods of recovery already existed. But in view of the fact that seamen enjoy a favored status in the eyes of courts and legislative bodies,[9] this extension of the common law grounds for recovery of damages for injury in an action *in rem* in admiralty, affording a remedy not possible under the Jones Act, seems justified, as it ensures to the seaman the satisfaction of his claim.

Bankruptcy—Section 77B—Limitation of Collusively Acquired Claims to Consideration Paid Therefor—A debtor corporation defaulted on its mortgage bonds, and, having petitioned for reorganization under Section 77B of the Bankruptcy Act,[1] obtained a stay of the trustee's sale of the mortgaged properties, its sole assets. After this, *A Company,* seeking to gain control of the reorganization proceedings and to acquire the properties free from shareholders' equities, induced the bondholders' protective committee to exclude a syndicate allied with the debtor corporation from bidding for the bonds at the committee's sale by withholding essential information, and thus acquired 98 per cent. of the bonds for 40 cents on the dollar. The properties had a then estimated value of less than the bonded debt due to unusually unfavorable market conditions. The district court, upon the master's finding of collusion, confirmed the debtor corporation's reorganization plan providing for payment to *A Company* of only the consideration paid for the bonds. On appeal, *held* (one judge dissenting), that the plan should be rejected and the stay of trustee's sale vacated, since no fiduciary duty toward the debtor corporation had been violated. *Security-First Nat. Bank of Los Angeles v. Rindge Land & Navigation Co.,* 85 F. (2d) 557 (C. C. A. 9th, 1936), *rehearing denied,* C. C. H. Bankr. Serv. ¶ 4242 (1936).

Although ordinarily under Section 77B a plan of reorganization which is opposed by two-thirds of any class of creditors whose material interests are adversely affected thereby may not be confirmed by the court,[2] there is some indication that the Act confers broad equitable powers on the courts in determining what those interests properly are.[3] The so-called "scrutiny" clauses, which empower the courts to limit future rent claims or claims presented by bondholders' committees to the actual consideration paid therefor,[4] seem particularly to extend those powers in regard to questionable activities of bondholders' committees [5] and speculation in claims acquired after the commencement of reor-

cases have indicated recognition of such a duty. *Cf.* West Ky. Coal Co. v. Parker's Adm'r, 229 Ky. 685, 17 S. W. (2d) 753 (1929); Patterson v. Cleveland Cliffs Iron Co., 37 Ohio App. 316 (1930). See *supra* note 7.

9. See The A. Heaton, 43 Fed. 592, 595 (C. C. D. Mass. 1890); The Catalonia, 236 Fed. 554, 556 (E. D. Va. 1916); McDonald v. United States, 292 Fed. 593, 594 (C. C. A. 2d, 1923).

1. 48 STAT. 912 (1934), 11 U. S. C. A. § 207 (Supp. 1936).

2. 48 STAT. 912 (1934), 11 U. S. C. A. § 207 (e) (Supp. 1936); *In re* Murel Holding Corp., 75 F. (2d) 941 (C. C. A. 2d, 1935); *In re* Preble Corp., 12 F. Supp. 1002 (D. Me. 1935).

3. A plan of reorganization not approved by creditors holding two-thirds in amount of the claims "shall provide . . . adequate protection for the realization by them of the value of their interests . . . by such method as will in the opinion of the judge, under and consistent with the circumstances of the particular case, equitably and fairly provide such protection." 48 STAT. 912 (1934), 11 U. S. C. A. § 207 (b) (5) (Supp. 1936). On the constitutionality of this provision, see *In re* Tennessee Publishing Co., 81 F. (2d) 463 (C. C. A. 6th, 1936), 84 U. OF PA. L. REV. 780.

4. 48 STAT. 912 (1934), 11 U. S. C. A. § 207 (b) (5) (Supp. 1936).

5. See Kahn, *The New Corporate Reorganization Statute* (1935) 9 J. N. A. REF. BANKR. 11, 14.

ganization proceedings.[6] Therefore, while in the instant case the claim was not presented by "a committee member or agent",[7] yet, in the light of the claimant's obvious domination of the bondholders' committee,[8] the court might well have refused to allow *A Company* thus to block the reorganization proceedings.[9] Power to do this is further shown by another clause in 77B which requires that claimants in accepting a plan of reorganization shall submit statements of what claims have been acquired by them "after the commencement or in contemplation of the proceeding, and the circumstances of such purchase or transfer."[10] If these circumstances are material when claimants accept a plan, it would seem to follow that they are also material where full payment is insisted upon. The circuit court based its decision largely on the assumption that the rights of the debtor corporation had not been invaded, whatever injury might have been inflicted upon the original bondholders by the collusive transaction. This holding would seem to deny a right on the part of the debtor, or persons cooperating with it, to a fair chance of purchasing its own obligations in order to preserve its assets,[11] despite the fact that one of the primary purposes of 77B was to relieve debtors paralyzed by just such "frozen" assets.[12] Furthermore, it unfortunately intimates that the exploitation of bondholders by their "protective" committees[13] is not a material circumstance in reorganization proceedings unless the bondholders themselves object. The rights of all parties concerned would have been better served had the court, even though rejecting the proposed plan, continued the stay of liquidation proceedings long enough to enable the bondholders to acquire the information essential to their taking appropriate action against their committee, and also to enable the debtor to devise some other plan which might preserve the equities of the shareholders.

Conflict of Laws—Effect of Decree of Unfitness on Father's Right to Fix Child's Domicile—In divorce proceedings the custody of a child was awarded to the mother, and at her death a guardian was appointed because the father was decreed unfit to have the custody of the child. On the death of the guardian the father seized the child, took it from Texas into Kentucky and there had himself appointed guardian of its person and a Kentucky trust company appointed guardian of its estate. The trust company sought to compel a new Texas guardian, appointed after the child had been taken into Kentucky, to deliver to it the child's estate in Texas. *Held,* that on the death of the guardian the right to the child's custody vested in the father, and, therefore, the domicile of the child being the same as the father's, the Kentucky guardian should prevail. *Bradford v. Lincoln Bank & Trust Co. of Ky.*, 96 S. W. (2d) 821 (Tex. Civ. App. 1936).

6. *In re* McCrory Stores Corp., 12 F. Supp. 267 (S. D. N. Y. 1935). See Fried, *The Effect of Section 77B on Real Estate Reorganizations* (1935) 4 BROOKLYN L. REV. 310, 336.

7. 48 STAT. 912 (1934), 11 U. S. C. A. § 207 (b) (5) (Supp. 1936).

8. See instant case at 566, 567.

9. In *In re* Celotex Co., 12 F. Supp. 1 (D. Del. 1935), it was held that since the purchaser had not dominated the bondholders' committee, its claim could not be limited under 77B to the consideration paid.

10. 48 STAT. 912 (1934), 11 U. S. C. A. § 207 (e) (1) (Supp. 1936). See 3 GERDES, CORPORATE REORGANIZATIONS (1936) 1778.

11. *Cf. In re* New York Rys. Corp., 82 F. (2d) 739 (C. C. A. 2d, 1936), in which the court did not limit the claim of a certain bond purchaser since it had not actively prevented the debtor from buying the bonds.

12. See Gerdes, *Constitutionality of 77B* (1935) 12 N. Y. U. L. Q. REV. 196, 201, 202.

13. The activities of bondholders' protective committees in corporate reorganizations have been increasingly subjected to criticism in recent years. See Lowenthal, *The Railroad Reorganization Act* (1933) 47 HARV. L. REV. 18, 38, 39.

While generally the domicile of an unemancipated,[1] legitimate [2] child is that of its father,[3] when the father has abandoned the child,[4] or has permitted it to be adopted,[5] or when the custody of the child has been awarded to the mother by a judicial decree,[6] the domicile of the child is held not to be that of its father. Therefore, as the father's power to fix the domicile of his child appears to rest upon his right to custody and control,[7] it should follow that the father here could not change the domicile of his son, since he had been deprived of the child's custody by reason of his unfitness, and such a decree should continue in effect until set aside by competent proceedings. And furthermore, it hardly seems in keeping with the principle that the welfare of the child is the primary consideration,[8] to hold as did the instant court, that immediately upon the death of the guardian the custody of the child vested in the father, who had been deprived of the custody because of his unfitness, since the unfitness obviously continued. It would seem that on the death of the guardian, the natural guardian being incompetent, the child should be considered a ward of the court until a new guardian is appointed. Therefore, as the domicile of the child remained in Texas, the Kentucky court was without jurisdiction to appoint a guardian,[9] and hence the Texas guardian should have prevailed.

Constitutional Law—Obligation of Contracts Impaired by Pennsylvania Mortgage Deficiency Judgment Act of 1935—Plaintiff mortgagee recovered a judgment against defendant mortgagor, and issued attachment execution thereon against a bank as garnishee. Defendant sought to restrain such execution on the ground that the plaintiff had failed to comply with the Mortgage Deficiency Judgment Act of 1935,[1] which required a mortgagee to proceed first against the mortgaged premises and to have the court fix its "fair value" and allow a deficiency judgment for the difference between such "fair value" and the amount of the judgment, interest, and costs. *Held,* that the statute was unconstitutional, since it continues in force the provisions of the 1934 Act,[2] which the Pennsylvania Supreme Court had previously held violated the restrictions against impairing the obligations of contracts. *Shallcross v. North Branch-Sedgwick Bldg. & Loan Ass'n,* 187 Atl. 819 (Pa. Super. Ct. 1936).

The court followed the decision of the Pennsylvania Supreme Court in *Beaver County Bldg. & Loan Ass'n v. Winowich,*[3] criticized in a recent issue of

1. An emancipated minor may acquire a domicile of his own. Bjornquist v. Boston & A. R. Co., 250 Fed. 929 (C. C. A. 1st, 1918); RESTATEMENT, CONFLICT OF LAWS (1934) § 31.
2. An illegitimate child has the domicile of its mother. Blythe v. Ayres, 96 Cal. 532, 31 Pac. 915 (1892).
3. Note (1914) 49 L. R. A. (N. S.) 860, and cases cited; RESTATEMENT, CONFLICT OF LAWS (1934) § 30.
4. *In re* Vance, 92 Cal. 195, 28 Pac. 229 (1891); People v. Dewey, 23 Misc. 267, 50 N. Y. Supp. 1013 (Sup. Ct. 1898); RESTATEMENT, CONFLICT OF LAWS (1934) § 33.
5. *In re* Johnson, 87 Iowa 130, 54 N. W. 69 (1893); RESTATEMENT, CONFLICT OF LAWS (1934) § 35.
6. Toledo Traction Co. v. Cameron, 137 Fed. 48 (C. C. A. 6th, 1905); Fox v. Hicks, 81 Minn. 197, 83 N. W. 538 (1900); Griffin v. Griffin, 95 Ore. 78, 187 Pac. 598 (1920).
7. See Toledo Traction Co. v. Cameron, 137 Fed. 48, 57 (C. C. A. 6th, 1905); also see dissenting opinion in *In re* Thorne, 240 N. Y. 444, 451, 148 N. E. 630, 632 (1925).
8. LONG, DOMESTIC RELATIONS (3d ed. 1923) 447, and cases cited.
9. Kline v. Kline, 57 Iowa 386, 10 N. W. 825 (1881); *In re* Hubbard, 82 N. Y. 90 (1880); Lanning v. Gregory, 100 Tex. 310, 99 S. W. 542 (1907); RESTATEMENT, CONFLICT OF LAWS (1934) § 117.

1. PA. STAT. ANN. (Purdon, Supp. 1935) tit. 21, §§ 808 *et seq.*
2. *Id.* at § 806.
3. 187 Atl. 481 (Pa. 1936).

the REVIEW.[4] The instant decision was perhaps more justified in holding that the 1935 Act effected an unconstitutional impairment of contractual obligations inasmuch as it contained a provision, not in the earlier act, which required a mortgagee to proceed first against the mortgaged property and have a deficiency judgment fixed by the court before he could proceed against any other property of the mortgagor.[5]

Constitutional Law—Twenty-first Amendment—Commerce Clause—Equal Protection Clause—Validity of State License Fee for Importing Beer—The California Alcoholic Beverage Control Act levied a $500 license fee on each business premises of importers of beer.[1] Plaintiffs, wholesalers engaged in selling imported beer, sought to enjoin the enforcement of the tax on the ground that it discriminated against wholesalers of imported beer and hence violated both the commerce [2] and equal protection [3] clauses. *Held,* that the injunction sought be denied because the Twenty-first Amendment [4] "abrogated the right (under the commerce clause) to import free, as far as concerns intoxicating liquors", and "a classification recognized by the Twenty-first Amendment cannot be deemed forbidden by the Fourteenth." *State Board of Equalization of California v. Young's Market Co.,* 57 Sup. Ct. 77 (1936).

The degree to which the state police power, under the Twenty-first Amendment, may encroach on the commerce clause with regard to intoxicating beverages has been the subject of varying decisions.[5] No previous decision, however, has gone so far as to allow the police power to encroach upon the equal protection clause except for one dictum which was clouded by other views presented with it.[6] And, although the classification here seems valid,[7] the reasoning which led the Supreme Court to sanction the imposition of this license fee against importers alone seems fallacious. The aim of the legislation, culminating in the Webb-Kenyon Act,[8] which preceded the Twenty-first Amendment was to pre-

4. (1936) 85 U. OF PA. L. REV. 114.

5. PA. STAT. ANN. (Purdon, Supp. 1935) tit. 21, § 808. See (1936) 84 U. OF PA. L. REV. 792.

1. CAL. ACTS (Deering, Supp. 1935) no. 3796, §§ 5 (8), 7.

2. U. S. CONST. ART. I, § 8, cl. 3.

3. *Id.* AMEND. XIV, § 1.

4. *Id.* AMEND. XXI, § 2, provides: "The transportation or importation into any state . . . for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

5. To the effect that the Twenty-first Amendment was not intended to except intoxicating liquors from the commerce clause, see Young's Market Co. v. State Board of California, 12 F. Supp. 140 (S. D. Cal. 1935); Joseph Triner Corp. v. Arundel, 11 F. Supp. 145 (D. Minn. 1935), 84 U. OF PA. L. REV. 252; *cf.* General Sales & Liquor Co. v. Becker, 14 F. Supp. 348 (E. D. Mo. 1936). *Contra:* Premier-Pabst Sales Corp. v. Grosscup, 12 F. Supp. 970 (E. D. Pa. 1935), *aff'd on other grounds,* 298 U. S. 226 (1936).

6. Premier-Pabst Sales Corp. v. Grosscup, 12 F. Supp. 970 (E. D. Pa. 1935), *aff'd on other grounds,* 298 U. S. 226 (1936). While the opinion appears to countenance discriminatory state legislation, it maintains that the statute in question would be valid under the Webb-Kenyon Act (see note 7 *infra*) without the Twenty-first Amendment, and it is unlikely that an act of Congress could be valid if it sanctioned legislation repugnant to the Fourteenth Amendment.

7. Importers of beer might well be separately classified and burdened with a heavier tax because of the greater difficulty to the state in the matter of inspection and control, as well as the fact that imported beer was subject to no local tax on its manufacture. *Cf.* the discussion on pages 323, 324 of this issue of the REVIEW.

8. 37 STAT. 699 (1913), 27 U. S. C. A. § 122 (1927), re-enacted, 49 STAT. 877, 27 U. S. C. A. § 122 (Supp. 1935), provides: "The shipment . . . of . . . intoxicating liquor . . . from one state . . . into any other state, . . . which . . . intoxicating liquor

vent the exclusive power of Congress over interstate commerce from rendering nugatory state police regulation of the liquor traffic.[9] That the Twenty-first Amendment was directed at the same evil is apparent not only from the fact that its wording is nearly identical with that of the Webb-Kenyon Act,[10] but from the discussion in Congress concerning the Amendment, which indicated clearly that the Amendment was felt necessary only because the Act had been upheld by a divided court and Congress desired to protect the dry states against the contingency of its repeal or a later adverse decision of the Court.[11] Therefore, both the Act and the Amendment were intended to divest the importation of intoxicating liquors of the protection of the commerce clause only when such importation was forbidden by state laws which were *otherwise constitutional.*[12] There was no reason for the people to sanction any classification repugnant to the Fourteenth Amendment. To hold that the Twenty-first Amendment permits discriminatory classifications is to give it an effect which its terms do not require, which its history indicates was not intended, and which opens the door to the evils of retaliatory legislation among the states.

Constitutional Law—Validity of Ordinance Imposing Heavier License Tax on Non-Resident Businesses—A municipal ordinance imposed a tax of $50 per year upon all dry cleaners not having a permanent place of business in the city, for the privilege of collecting garments within the city to be serviced outside, but taxed residents of the city engaged in the same business only $5 per year.[1] Plaintiff brought an action to enjoin enforcement of the ordinance. *Held,* that, as the taxes levied by the ordinance did not apply equally to the classes upon which they were imposed, the injunction should be granted. *Speier's Laundry Co. v. Wilber,* 269 N. W. 119 (Neb. 1936).

Plaintiff baking corporation, which delivered by trucks to merchants, sought to enjoin the enforcement of a similar ordinance applicable to bakeries.[2] *Held,* that the injunction should be refused, as the ordinance was not in contravention of the "equal protection clause" of the Federal Constitution.[3] *American Bakeries Co. v. Huntsville,* 168 So. 880 (Ala. 1936).

To be valid, an ordinance which attempts to distinguish on the ground of residence between persons engaged in the same business must be based not merely on the fact that resident and non-resident businesses *ipso facto* differ, but rather

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is intended . . . to be . . . in any manner used . . . in violation of any law of such state . . . is hereby prohibited." The title states that its purpose is to divest "intoxicating liquors of their interstate character in certain cases."

9. See Rogers, *Interstate Commerce in Intoxicating Liquors Before the Webb-Kenyon Act* (1916) 4 VA. L. REV. 174.

10. Compare wording, *supra* notes 4 and 8.

11. See 76 CONG. REC. 2199, 4140-4141, 4170-4172 (1933). After reviewing the evils of the liquor traffic into dry states before the Eighteenth Amendment, Senator Borah stated, "All this was sought to be remedied by the *Webb-Kenyon Act,* and I am very glad indeed the able Senator from Arkansas has seen fit to recognize the justice and fairness to the States of *incorporating it permanently in the Constitution of the United States.*" 76 CONG. REC. 4172 (1933). (Italics added.)

12. Compare Commonwealth v. One Dodge Motor Truck, 187 Atl. 461 (Pa. Super. Ct. 1936), 85 U. OF PA. L. REV. 222.

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1. Cited in Speier's Laundry Co. v. Wilber, 269 N. W. 119, 120 (Neb. 1936).

2. Cited in American Bakeries Co. v. Huntsville, 168 So. 880, 881 (Ala. 1936). A tax of $300 is imposed upon bakeries located outside the city but which sell products within the city, and a tax of $100 upon sellers of bakery products having regular places of business within the city.

3. U. S. CONST. AMEND. XIV.

on substantial differences between them arising from that fact.[4] While many courts refuse to recognize any reasonable basis for the separate treatment of businesses having no permanent establishment within the city,[5] there appears to be a trend toward sustaining the validity of such legislation on the ground that there is a difference in the mode of transacting business, an analogy being drawn to the familiar license taxes upon peddlers.[6] However, as both resident and non-resident firms in the same trade usually conduct their business in the same manner, delivering their products from door to door, this ground does not appear to be entirely tenable. But nevertheless, there is sufficient justification for supporting such a classification. In the first place, public policy favors the local merchant whose economic stability is threatened by a continual flow of competitors. Secondly, the local merchant pays additional taxes and expenses and has a limited number of customers, and finally, the non-resident trader should be required to share the burdens of the local government, as he profits from his business within the city.[7] Of course, on the other hand, he pays taxes to the city in which he is established, and must bear hauling charges in excess of those of local merchants. But on the whole, such considerations would indicate that the imposition of higher license fees on non-resident businesses, while somewhat provincial and subject to the same attack upon economic grounds as national tariffs,[8] are still reasonable, and therefore a constitutional classification.

Corporations—Shareholder Failing to Consent to Recapitalization Plan Not Entitled on Later Dissolution to Preferential Rights Obtained by Consenting Shareholders—Holders of par value preferred shares, entitled to unpaid cumulative dividends, were invited by a corporation under a recapitalization plan to exchange their stock, by a certain date, for no par participating preferred shares entitling the holders to a preference over holders of the old preferred shares.[1] The great majority of shareholders surrendered their shares for the new issue, waiving their rights to the cumulative dividends on the old shares, but plaintiff neither expressly dissented from this plan nor turned in his shares within the time limit.[2] Upon the dissolution of the corporation, three months later, he demanded of the trustees the right to participate equally in the assets with the holders of the new preferred shares, there being no funds to pay

4. Chalker v. Birmingham Ry., 249 U. S. 522 (1919); Williams v. Bowling Green, 254 Ky. 11, 70 S. W. (2d) 967 (1934); *Ex parte* Baker, 127 Tex. Cr. 589, 78 S. W. (2d) 610 (1935).

5. Ward Baking Co. v. Fernandina, 29 F. (2d) 789 (S. D. Fla. 1928); Hair v. Humboldt, 133 Kan. 67, 299 Pac. 268 (1931); Grantham v. Chickasha, 156 Okla. 56, 9 P. (2d) 747 (1932); *Ex parte* Baker, 127 Tex. Cr. 589, 78 S. W. (2d) 610 (1935).

6. Singer Sewing Machine Co. v. Brickell, 233 U. S. 304 (1914); Campbell Baking Co. v. Harrisonville, 50 F. (2d) 670 (C. C. A. 8th, 1931); State v. Gray, 96 S. W. (2d) 447 (Ark. 1936); Greenleaf & Crosby Co. v. Coleman, 117 Fla. 723, 158 So. 421 (1934); Williams v. Bowling Green, 254 Ky. 11, 70 S. W. (2d) 967 (1934). The analogy is not entirely valid, since the ordinary ordinance imposes a tax upon peddlers whether or not they have established places of business within the city, so that even resident merchants are subject to the tax if, in addition to the business conducted at the place of their establishment, they carry on an itinerant trade.

7. See Richmond Linen Supply Co. v. Lynchburg, 160 Va. 644, 169 S. E. 554 (1933).

8. See PATTERSON AND SCHOLZ, ECONOMIC PROBLEMS OF MODERN LIFE (2d ed. 1931) 230-248.

1. Under the authority of N. Y. CONS. LAWS (Cahill, 1930) c. 60, §§ 36, 37.

2. "If the certificate alters the preferential rights of any outstanding shares, any holder of such shares not voting in favor of such alteration, within twenty days after the meeting at which such alteration was authorized, may object thereto and demand payment for his shares. . . ." N. Y. CONS. LAWS (Cahill, 1930) c. 60, § 38, subdivision 12.

him after payment to the new shareholders. *Held,* that the plaintiff could not so participate, because only those who had accepted the new shares were parties to the contract by which the preferential rights to the assets were created. *Matter of Duer,* 270 N. Y. 343, 1 N. E. (2d) 457 (1936).

Although the New York Stock Corporation Law did not beyond all doubt authorize a corporation to issue new shares having preferential rights superior to the preferred shares then outstanding, the legislature probably intended corporations to have that power,[3] and the exercise of it has been assumed to be valid.[4] Here, the question was raised as to the acts necessary to vest in a holder of outstanding shares having cumulative dividend rights, the incidents of ownership of new shares having preferential rights in the assets in case of dissolution. In the first place, plaintiff as a holder of the old shares should not have been treated as having automatically become a holder of the new shares upon their authorization, because the new shares were to go only to those who gave up their cumulative dividend rights, which probably could not be taken from the plaintiff without his consent.[5] Secondly, the offer of the new shares demonstrated that the corporation did not intend those who failed to turn in their old certificates to be entitled to the new shares.[6] Furthermore, the plaintiff's failure to dissent to the change in preferential rights within the twenty day time limit fixed by statute did not show a willingness to exchange them for the new shares. If plaintiff wished to retain his cumulative dividend rights, rather than to forego them for the immediate cash value of his shares, he properly failed to dissent, for express dissent, coupled with a demand for an appraisal and purchase of his shares, would have led to his giving up those rights. And finally, by the passing of the fixed time limit set by the corporation, the shareholder lost his power to accept the corporation's offer of new shares.[7] The court, consequently, properly refused to treat him as if he had gained preferential rights to the assets upon dissolution, as he had not foregone his right to unpaid cumulative dividends.

Insurance Law—Effect of Premium Payment and Issuance of Binding Receipt When Policy Does Not Conform to Terms of Receipt—Plaintiff, a coal miner, paid defendant's agent the "estimated" premium on a life insurance

3. Section 36, which enumerates in detail the changes which a stock corporation may effect in respect to shares or capital stock, nowhere explicitly specifies that the preferential rights of outstanding shares may be altered by the creation of new shares, but § 37, subdivision 3-c, provides for the filing of a certificate pursuant to § 36, along with an affidavit, "if such certificate alters the preferences of outstanding shares of any class or authorizes shares having preferences which are in any respect superior to those of outstanding shares. . . ." N. Y. CONS. LAWS (Cahill, 1930) c. 60, § 37, subdivision 3-c.

4. Matter of Silberkraus, 250 N. Y. 242, 165 N. E. 279 (1929) (discussed only the power to dissent, assuming the power to alter preferential rights).

5. Keller v. Wilson, Del. Sup. Ct., Nov. 10, 1936, wherein it was held that the privileges of a preferred stockholder constituted a vested property right, and, although 99 per cent. of the preferred stockholders had agreed to give up that right, to deprive the other one per cent., without their consent, of those privileges was a violation of the "due process clause". The plaintiff was there seeking to retain his right to cumulative dividends in cash, while in the instant case the plaintiff was seeking to be treated as if he had given up that right.

6. See instant case at 347, 1 N. E. (2d) at 458.

7. "The power to create a contract by acceptance of an offer terminates at the time specified in the offer. . . ." RESTATEMENT, CONTRACTS (1932) § 40. Courts have emphasized the necessity of a shareholder's taking positive action within a fixed time limit to obtain shares, in analogous situations. First, when shareholders agree to reorganize an insolvent corporation, equity will not permit those who failed to turn in their shares by the set date to later claim shares in the reorganized corporation. Gresham v. Island City Sav. Bank, 21 S. W. 556 (Tex. Civ. App. 1893). Accord: Keane v. Moffly, 217 Pa. 240, 66 Atl. 319 (1907). Second, when a shareholder in a solvent corporation fails to exercise his pre-emptive rights within a limited and reasonable period, he is deemed to have waived those rights. Noble v. Great American Ins. Co., 200 App. Div. 773, 194 N. Y. Supp. 60 (1st Dep't, 1922).

policy to be issued with double indemnity and disability provisions. The receipt given to the plaintiff recited that the policy was to take effect immediately, "providing the applicant is . . . an insurable risk . . . and the application is otherwise acceptable on the plan and for the amount and at the rate of premium". Eight days later the defendant mailed to the plaintiff a policy providing for semi-annual premiums, starting with the date of issuance, in which the double indemnity feature was omitted and the premium rate increased because of the plaintiff's occupation. In the meantime the plaintiff suffered disability, and sued on the policy. *Held* (Maxey, J. dissenting), for the plaintiff, because the policy was effective as of the date the agent issued the receipt. *Stonsz v. Equitable Life Assur. Soc. of the United States,* 187 Atl. 403 (Pa. 1936).

It has long been settled that a contract of insurance may be either oral[1] or written,[2] and therefore, the receipt in the instant case may be regarded as either: (1) evidence of an oral offer to enter into a contract of insurance,[3] the agent being a conduit through which this offer was transmitted to the insurance company, (2) evidence of an oral contract of insurance entered into by the agent on behalf of the insurance company,[4] with a condition subsequent, *i. e.* the disapproval of the company, which would divest the insurance company of any obligation under the contract, or (3) evidence of a contract of insurance with a condition precedent, *i. e.,* the approval of the insurance company, the occurrence of which was necessary to the creation of any liability to the insured.[5] If the transaction whereby the premium was paid and the receipt given were considered an offer, then it would seem that the offer was rejected,[6] and a counter-offer sent to the plaintiff when the insurance company refused to issue a policy according to the terms of the receipt,[7] but offered instead death benefits and disability coverage at a higher premium. Furthermore, since no provision of the policy specifically referred to an effective date, and as the policy was dated after the disability, and the premium was due semi-annually at a date which corresponded to the date of the policy, the intent of the parties must have been that the insurance be effective at that time,[8] so that the defendant should not have been liable for a previous disability. However, the terms of the receipt implied that an oral

1. Wilson v. Hartford Fire Ins. Co., 188 Ill. App. 181 (1914); Newark Mach. Co. v. Kenton Ins. Co., 50 Ohio St. 549, 35 N. E. 1060 (1893); Haskin v. Agricultural Fire Ins. Co., 78 Va. 700 (1884).

2. In some states, however, statutes require that the policy be written. *E. g.,* GA. CODE (1926) § 2470.

3. The court in the instant case apparently so regarded it. However, the transaction was also termed a contract with a condition precedent (at 406), and a contract with a condition subsequent (at 407).

4. See VANCE, INSURANCE (1930) 194.

5. Armstrong v. State Ins. Co., 61 Iowa 212, 16 N. W. 94 (1883); Picket v. German Fire Ins. Co., 39 Kan. 697, 18 Pac. 903 (1888).

6. The court reasoned that the receipt showed the insured had made an offer with three severable parts, and that since the insurer had accepted two of these three parts, including disability benefits, the insured was covered by disability insurance under the terms of his offer. This view was unwarranted. 2 PARSONS, CONTRACTS (9th ed. 1904) 519, says: "If the consideration to be paid is single and entire, the contract must be held to be entire, although the subject of the contract may consist of several distinct dependent items." Although this rule should not be applied indiscriminately, it is applicable in the present instance, when there is no other evidence of the intention of the parties. Accord: Aetna Ins. Co. v. Resh, 44 Mich. 55, 6 N. W. 114 (1880); McClurg v. Price, 59 Pa. 520 (1869); Hinman v. Hartford Fire Ins. Co., 36 Wis. 159 (1874); *cf.* RESTATEMENT, CONTRACTS (1932) § 266 (3).

7. State *ex rel.* Equitable Life Assur. Soc. of the U. S. v. Robertson, 191 S. W. 989 (Mo. 1916).

8. Home Life & Accident Co. v. Compton, 144 Ark. 561, 222 S. W. 1063 (1920); New York Life Ins. Co. v. Smith, 129 Miss. 544 (1922); Haynes v. Midland Nat. Life Ins. Co., 60 S. D. 212, 244 N. W. 110 (1932); Long v. New York Life Ins. Co., 106 Wash. 458, 180 Pac. 479 (1919).

contract already had been formed,[9] the effective date being the date of the receipt. If that were so, and if the disapproval of the insurance company were considered a condition subsequent, then when the company expressed its disapproval by sending a different policy to the insured who did not comply with its rules, the company was divested of any obligation under the oral contract.[10] But the wisdom of adding to those situations in which a subsequent condition will divest a contract of its obligation is questionable.[11] Therefore, the transaction here is best considered as a contract in which the insurance company's approval of the oral contract and the insurability of the plaintiff for the estimated premium were conditions precedent to liability. This approval was withheld, and consequently the policy was at most an offer of a new contract, which did not take effect until after the disability had been suffered.[12]

Taxation—Exemption of Property of Charitable Institution—Plaintiff Y. M. C. A. occupied a five-story building, three floors being devoted to dormitories used exclusively by members at an average weekly price per room of $5, although those unable to pay were admitted free. The money thus gained supplied nearly half the association's operating income in some years. That part of the property represented by the dormitories was assessed for county real estate taxes, under a statute exempting "all . . . institutions of . . . charity with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same." [1] Plaintiff appealed from the order. *Held*, that the dormitories were a commercial operation not so clearly necessary for the occupancy and enjoyment of the remainder of the building as to merit exemption from taxation under the act. *Young Men's Christian Ass'n v. Philadelphia*, 323 Pa. 401, 187 Atl. 204 (1936).

Where public charities are exempt from taxation,[2] the courts agree that it is the use to which the property of such an organization is put which determines its exemption,[3] property used primarily for immediate charitable purposes being exempt although it may yield certain incidental profits,[4] whereas property used primarily for profit is not exempt although all the proceeds may be devoted to the support of the organization.[5] In deciding that the instant case fell within the latter rule, the court apparently departed from precedent in Pennsylvania [6]

9. Binding receipts are usually so interpreted. VANCE, INSURANCE (1930) 194.
10. RESTATEMENT, CONTRACTS (1932) § 396.
11. See 3 WILLISTON, CONTRACTS (Willis. and Thomp. ed. 1936) § 667.
12. See cases cited *supra* note 8.

1. PA. STAT. ANN. (Purdon, Supp. 1935) tit. 72, § 5020-204 (c). The statute was passed in accordance with art. IX, § 1 (4) of the state constitution, which allows the legislature to exempt from taxation "institutions of purely public charity". It is to be noted that this wording of the statute has not changed since 1874. See Barnes Foundation v. Keeley, 314 Pa. 112, 120, 121, 171 Atl. 267, 270 (1934).

2. This condition exists by statute in practically all states. See Baker, *Tax Exemption Statutes* (1928) 7 TEX. L. REV. 50, 56; Note (1932) 80 U. OF PA. L. REV. 724.

3. Board of County Comm'rs v. Denver & R. G. R. R. Relief Ass'n, 70 Colo. 592, 203 Pac. 850 (1922); Theta Xi Bldg. Ass'n v. Board of Review, 217 Iowa 1181, 251 N. W. 76 (1933).

4. House of the Good Shepherd v. Board of Equalization, 113 Neb. 489, 203 N. W. 632 (1925), 10 MINN. L. REV. 358; House of Refuge v. Smith, 140 Pa. 387, 21 Atl. 353 (1891).

5. People *ex rel.* Baldwin v. Jessamine Withers Home, 312 Ill. 136, 143 N. E. 414 (1924); American Sunday School Union v. Philadelphia, 161 Pa. 307, 29 Atl. 26 (1894); see cases cited in Note (1925) 34 A. L. R. 634, 659 *et seq.*, and as to Y. M. C. A.'s specifically, Note (1925) 34 A. L. R. 1067, 1072-75.

6. Philadelphia v. Women's Christian Ass'n, 125 Pa. 572, 17 Atl. 475 (1889); Philadelphia v. Pennsylvania Hospital for the Insane, 154 Pa. 9, 25 Atl. 1076 (1893) (special build-

and elsewhere,[7] thus indicating a new intention to strictly construe the exemption of "purely public charities." [8] Moreover, in holding that the operation of the dormitory was not "necessary" for the enjoyment of the remainder of the building, the court ignored the authority that "necessary" is to be construed as not *absolutely* so, but only *reasonably* so in the opinion of the directors of the association; [9] and certainly a dormitory is reasonably necessary, in that it provides decent quarters for members having no home in the city, allowing them to take fuller advantage of what the association offers. The decision seems to have been motivated by several factors: first, the apprehension that if the court were to concede this step, it would also have to exempt association restaurants, barber shops, etc.,[10] but such fears need be realized only in the rare cases where the public is excluded from those operations.[11] Secondly, the court assumed that the operation of a dormitory and the leasing of property to a third party were identical,[12] when in fact this may constitute just the difference between reasonable and unreasonable necessity under the statute. While in view of the rising cost of government and the unfairness of any special privileges to groups not under public control, it would be desirable to reduce the amount of tax-exempt property,[13] that end should be attained preferably by a repeal of the exemption statute, and not by an unwarranted construction of the existing one with the inevitability of discrimination among institutions of equal merit.

Taxation—Federal Estate Tax—Reimbursement of Residuary Legatees by Beneficiaries of Inter Vivos Revocable Trust—Testator, who had created a revocable trust inter vivos, died leaving a residuary estate. The executor, hav-

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ing for patients able to pay prices set at a level yielding a gross profit from the running of that building, which "apparent profit" was used for the general expenses, held exempt). The court supposedly distinguished between the instant case and the former by saying that there was no proof here that lodging was furnished at less than cost, but then said that whether a profit is made was "wholly immaterial". Instant case at 411-413, 187 Atl. at 209. No attempt was made to explain the second case. In the lower courts, see Y. M. C. A. v. Easton, 3 D. & C. 562 (Pa. 1922); Y. M. C. A.'s Appeal, 15 D. & C. 421 (Pa. 1930).

7. *In re* Syracuse Y. M. C. A., 126 Misc. 431, 213 N. Y. Supp. 35 (Sup. Ct. 1925); Commonwealth v. Lynchburg Y. M. C. A., 115 Va. 745, 80 S. E. 589 (1914), cited with approval in 2 COOLEY, TAXATION (4th ed. 1924) § 787; Ottawa Y. M. C. A. v. Ottawa, 29 Ont. L. Rep. 574 (1913). *Contra:* St. Louis Y. M. C. A. v. Gehner, 329 Mo. 1007, 47 S. W. (2d) 776 (1932). The court also ignored the strong analogy to the exemption of college dormitories, for which students pay substantial prices. Yale Univ. v. New Haven, 71 Conn. 316, 42 Atl. 87 (1899); Chicago v. Univ. of Chicago, 228 Ill. 605, 81 N. E. 1138 (1907); State v. Carleton College, 154 Minn. 280, 191 N. W. 400 (1923).

8. This indication is strengthened by the court's demand that a "charity" must (1) give services at a nominal or no charge to (2) legitimate subjects of charity. Instant case at 411, 412, 187 Atl. at 209. Compare such requirements with the definition in Episcopal Academy v. Philadelphia, 150 Pa. 565, 572, 573, 25 Atl. 55, 56 (1892).

9. Barnes Foundation v. Keeley, 314 Pa. 112, 171 Atl. 267 (1934) (embracing the ideas of convenience and usefulness for the purpose intended); see Foerderer v. Philadelphia, 111 Pa. Super. 328, 330, 170 Atl. 708, 709 (1934) (held not reasonable). See also Emerson v. Trustees of Milton Academy, 185 Mass. 414, 415, 70 N. E. 442 (1904).

10. Instant case at 414, 187 Atl. at 210.

11. See Y. W. C. A. v. New York, 217 App. Div. 406, 216 N. Y. Supp. 248 (1st Dep't, 1926), where a cafeteria run by the association was not exempted since the public was admitted. In fact, in the instant case a lunch counter was run by the association for its members, and no claim of taxation was made as to it. Instant case at 404, 187 Atl. at 206.

12. Practically all the cases from other states cited by the court were cases of leases to third parties. Instant case at 421-424, 187 Atl. at 213, 214. Although the court justly minimized the importance of admitting only members to the dormitories when any person could become a member, the cost and possible inconvenience of obtaining membership should not be entirely ignored, and members when admitted are obviously not lessees or third parties.

13. Hughes, *Tax Exemption* (1935) 13 TENN. L. REV. 79.

ing paid the federal estate tax,[1] including that portion chargeable against the corpus of the trust,[2] contended that the residuary legatees were entitled to reimbursement from the beneficiaries of an amount equal to the tax attributable to the assets of the trust. *Held,* that the residuary legatees must bear the entire burden of the tax. *In re Ely's Trust Estate,* Phila. Legal Intelligencer, Oct. 28, p. 1, col. 5 (Phila. Orph. Ct. 1936).

Since the estate tax is imposed, at least nominally, upon the right of the decedent to transfer his estate rather than upon the privilege of succeeding to property,[3] and as the residuary legatees are entitled to the residue only after payment of all expenses chargeable to the estate,[4] beneficiaries of the trust were held to be under no duty to reimburse the residuary legatees.[5] The tax in question was clearly an obligation of the estate,[6] and it ought to be payable like any expense which falls under the head of administration,[7] and result in a reduction of the residue.[8] Some courts have expressed this conclusion by the "presumption" that in the absence of a declaration by the donor relative to the payment of the tax, his intention was that the ultimate weight of taxation should rest where the law places it in the first instance.[9] However, although it may seem inconsistent to apportion among the beneficiaries the burden of a tax graduated according to the size of the total estate, a case may easily arise in which a trust fund is so much larger than the testamentary estate that the payment of the estate tax would entirely destroy the latter. To meet this inequality, New York has passed a statute which prorates the tax in the proportion that the value of the property of the beneficiary bears to the total value of the estate.[10] That such an enactment is desirable becomes clear when it is remembered that creditors of the decedent can look only to the testamentary estate.[11] Furthermore, the surviving spouse, who is often the residuary legatee, may see the estate considerably diminished, rendering even less valuable an election to take against the will.[12] Therefore, to eliminate an inequitable incidence of taxation it would be well to adopt more widely statutes similar to that of New York.[13]

1. 44 STAT. 69 (1926), 26 U. S. C. A. § 410 (1935).

2. Revocable trusts are included in the gross estate. 44 STAT. 69 (1926), 26 U. S. C. A. § 411 (1935); Reinecke v. Northern Trust Co., 278 U. S. 339 (1929); Porter v. Comm'r of Int. Rev., 288 U. S. 436 (1933).

3. Knowlton v. Moore, 178 U. S. 41 (1900); 4 COOLEY, TAXATION (4th ed. 1924) § 1722.

4. Langstroth v. Golding, 41 N. J. Eq. 49, 3 Atl. 151 (1886); Heermans v. Robertson, 64 N. Y. 332 (1876); Riegelman's Estate, 174 Pa. 476, 34 Atl. 120 (1896).

5. Accord: Farmers' Loan & Trust Co. v. Winthrop, 238 N. Y. 488, 144 N. E. 769 (1924), *cert. denied,* 266 U. S. 633 (1924); *cf.* Newton's Estate, 74 Pa. Super. 361 (1920).

6. 44 STAT. 69 (1926), 26 U. S. C. A. § 427 (1935); Page v. Skinner, 298 Fed. 731 (E. D. Ill. 1924), *cert. denied,* 266 U. S. 625 (1924).

7. Corbin v. Townshend, 92 Conn. 501, 103 Atl. 647 (1918).

8. See *supra* note 4.

9. See Y. M. C. A. v. Davis, 264 U. S. 47, 51 (1924); Bemis v. Converse, 246 Mass. 131, 134, 140 N. E. 686, 687 (1923).

10. N. Y. CONS. LAWS (Cahill, Supp. 1935) c. 61, § 249.

11. See State Bank of Clinton v. Barnett, 250 Ill. 312, 319, 95 N. E. 178, 180 (1911). But if the intent of the settlor was to defraud creditors, the property may be traced and attached. Graham's Adm'r v. English, 160 Ky. 375, 169 S. W. 836 (1914); see Penn Mutual Life Ins. Co. v. Hunt, 237 Mass. 241, 243, 129 N. E. 391, 393 (1921).

12. A spouse taking against the will cannot take personalty placed in trust for the benefit of others. Ellmaker v. Ellmaker, 4 Watts 89 (Pa. 1835); Pringle v. Pringle, 59 Pa. 281 (1868); Beirne v. Continental-Equitable Trust Co., 307 Pa. 570, 161 Atl. 721 (1932).

13. Cited *supra* note 10. And the federal estate tax, itself, provides for reimbursement by the beneficiaries of the tax on that portion of the corpus consisting of life insurance policies. 44 STAT. 69 (1926), 26 U. S. C. A. § 411 (g) (1935).